

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIO BALBINO DE JESUS,
Plaintiff,

Docket No. 09-Cv-4450 (TPG)

-against-

AKAM ASSOCIATES, INC., 166 EAST 96TH
STREET OWNERS CORP., GLEN KAPOOSUZIAN and
EVEREST SCAFFOLDING, INC.,
Defendants

AKAM ASSOCIATES, INC. and 166 EAST 96TH
STREET OWNERS CORP.,
Third-Party Plaintiffs,

-against-

GALCIA CONTRACTING AND RESTORATION
CORP.,
Third-Party Defendant.

STATE OF NEW YORK)
)SS.:
COUNTY OF WESTCHESTER)

WILLIAM WINGERTZAHN, ESQ., being duly sworn under penalty of perjury,
deposes and says:

1. I am a member of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for Third Party Defendant GALICIA CONTRACTING AND RESTORATION CORP. and as such, I am fully familiar with the facts and circumstances set forth herein.

2. Your Affiant submits this Affidavit in opposition to plaintiffs' motion for an Order (a) pursuant to Fed.R.Civ.P. 56 granting Summary Judgment in his favor; (b) in opposition to the motion of AKAM ASSOCIATES, INC. and 166 EAST 96TH STREET

OWNERS CORP. for summary judgment on the third party claim for contractual indemnification; and (c) granting such other, further and different relief as this Court deems just and proper.

3. As the accompanying **Memorandum of Law** demonstrates, plaintiff's motion for Summary Judgment must be denied. The evidence establishes that plaintiff was provided with an adequate safety device. However, plaintiff's own action in wearing his safety harness in an improper loose manner was the sole proximate cause of his injuries.

4. The SafeWaze Operation Characteristics portion of the SafeWaze User Instruction Shock Absorbing Lanyards Manual is **attached** hereto as **Exhibit "A"**.

5. The SafeWaze Fall Protection General Warnings and Precautions are **attached** hereto as **Exhibit "B"**.

6. Relevant excerpts from plaintiff's deposition transcript are **attached** hereto as **Exhibit "C"**.

7. Relevant excerpts from the deposition transcript of Fernando Paz are **attached** hereto as **Exhibit "D"**.

WHEREFORE, Third Party Defendant GALICIA CONTRACTING AND RESTORATION CORP. respectfully request that this Honorable Court issue an Order pursuant to Fed.R.Civ.P. 56: (a) denying plaintiffs' motion for Summary Judgment on the issue of liability; (b) denying the motion of the defendants AKAM ASSOCIATES, INCL, and 166 EAST 96TH STREET OWNERS CORP. for summary judgment on the third

party claims for contractual indemnification; and (c) granting such other, further and different relief as this Court deems just and proper.


WILLIAM WINGERTZAHN
(WW 7687)

Sworn to before me on this
21st day of February 2012


NOTARY PUBLIC

ANDREA F. O'BRIEN
Notary Public, State Of New York
No. 010B6121877
Qualified in Putnam County
My Commission Expires Jan. 31, 2013